

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

WILLIAM RAY, an individual,

Plaintiff

vs.

ASARCO, LLC, a limited liability Co.

Defendant

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CASE NO. 2:17-cv-8

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT AND JURY DEMAND

COMES NOW, WILLIAM RAY(“Ray”), an individual, Plaintiff, by and through his attorney submits this First Amended Complaint against the Defendant on the following allegations:

I.

INTRODUCTION

1.01 This action is brought pursuant to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000e, *et seq.*). The U.S. Equal Employment Opportunity Commission [EEOC] issued a right to sue dated January 12th, 2017, on behalf of Ray, Exhibit “A” hereto. The Defendant persistently discriminated against the named Plaintiff.

II.

JURISDICTION

2.01 Jurisdiction of this Court is invoked to secure protection of and redress deprivation of rights guaranteed by federal law, which rights provide for injunctive and other

relief for illegal discrimination in employment and the doctrine of pendant jurisdiction. This Court also has jurisdiction by virtue of diversity of citizenship.

III.

DEFENDANT

3.01 Defendant Asarco LLC (hereinafter “Asarco”), was the employer of Plaintiff in Amarillo, Potter County, Texas at the time the alleged acts of discrimination occurred. Its office is located at Fritch Highway, Amarillo, Texas, and its registered agent, CT Corporation System may be served with process at 1999 Bryan St., Suite 900, Dallas, TX 75001. Ray worked at the copper refinery located at the Fritch Highway, Amarillo, Texas, since August 8, 1994. The defendant has been served and Plaintiffs are advised it will answer shortly.

IV.

PLAINTIFF

4.01 Plaintiff was and is an Asarco employee who is being discriminated against, due to the hostile work environment on the basis of racial discrimination and retaliated against.

4.02 William Ray is an adult male who began his employment with Asarco on or around the 8th day of August 1994, and is still employed there for a period of twenty-two (22) years and five (5) months. Plaintiff’s position with Asarco is that of a load operator. Ray filed a charge of harassment and discrimination with the United States Equal Employment Opportunity Commission (EEOC) on October 20th, 2015, and received his “Notice of Suit Rights” on or about January 12th, 2017, Exhibit “A”.

V.

ALLEGATIONS

5.01 The named Plaintiff brings this action for discrimination pursuant to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000e, *et seq.*).

5.02 Plaintiff timely filed his EEOC charge against the Defendant for discrimination. The EEOC issued a notice of right to sue after investigating the underlying facts on or about January 12th, 2017, see Exhibit “A” hereto for all purposes.

5.03 This Defendant engaged in policies and practices which willfully, intentionally and unlawfully discriminated against Plaintiff on the basis of his race and that he was retaliated against for complaining about said treatment. These practices and policies include, but are not limited to (1) allowing known race discrimination to take place, (2) not taking action against that known race discrimination, (3) preventing Ray from getting a rightful raise, (4) treating Caucasian employees more favorably than Hispanics and African-Americans, including in disparate treatment and overtime pay.

5.04 Plaintiff’s mistreatment is a result of a policy and practice of the Defendant to allow harassment or discriminatory treatment to continue and only increasing the pay of Caucasian employees or allowing Caucasian employees preferential treatment over Hispanics and African-Americans, specifically including but not limited to the discriminatory treatment of Ray.

5.05 Plaintiff has been adversely affected by the willful discriminatory policies complained of herein. Specifically, the Plaintiff’s claims arise out of the Defendant’s discriminatory harassment and discriminatory treatment of Hispanics and African-Americans.

VI.

COUNT I

Racial Harassment and Discrimination

6.01 Plaintiff realleges and incorporates herein by reference the allegations contained in the above paragraphs.

6.02 Asarco through its agents, managers or supervisors engaged in a pattern and practice of unlawful race discrimination by subjecting Plaintiff to disparate treatment and racist remarks. Asarco further failed and refused to correct said discrimination when called to their attention or to discipline plaintiff's manager, on Weldon Read, who discriminated against him.

6.03 The above-described unwelcome discrimination created an intimidating, oppressive, hostile and offensive work environment which interfered and continues to interfere with Plaintiff's emotional well-being. Asarco has permitted the complained of race related comments and has not disciplined the offending employees.

6.04 Asarco and its officers and agents at all times relevant hereto had actual and constructive knowledge of the conduct described above.

6.05 As a result of the hostile and offensive work environment perpetrated by Defendant and maintained by Asarco's failure to protect Plaintiff and others from further discrimination, Plaintiff suffered and continues to suffer severe emotional distress.

6.06 Asarco and its officers and representatives violated 42 U.S.C. §2000, et seq., by failing to adequately supervise, control, discipline, and/or otherwise penalize the conduct, acts, and failures to act of William Ray's manager, one Weldon Read and others as described above.

6.07 Asarco and its officers and representatives failed to comply with their statutory duty to take all reasonable and necessary steps to eliminate harassment and discrimination from the workplace and to prevent it from occurring in the future. Asarco treated Caucasian employees more favorably than Hispanics and African-Americans.

6.08 Plaintiff is informed and believes, and based thereon alleges, that in addition the practices enumerated above, Defendant has engaged in other discriminatory practices against him which are not yet fully known. At such time as said discriminatory practices became known to him, Plaintiff will seek leave of Court to amend this Complaint in that regard.

6.09 Plaintiff has filed charges of discrimination with the Texas Department of Human Resources/U.S. Equal Employment Opportunities Commission (EEOC) against Defendant. A true and correct copy of the charge is attached hereto as Exhibit "B," and incorporated herein by reference. The EEOC has issued a Right-to-Sue Notice authorizing this lawsuit. A true and correct copy of the Notice is attached hereto as Exhibit "A," and incorporated herein by reference. Plaintiff has exhausted his administrative remedies.

6.10 As a direct and proximate result of Defendant's willful, knowing and intentional discrimination against him, Plaintiff has suffered and will continue to suffer pain and suffering, and extreme and severe mental anguish and emotional distress. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at trial.

6.11 As a further direct and proximate result of Defendant's violation as heretofore described, Plaintiff has been compelled to retain the services of counsel in an effort to enforce the terms and conditions of the employment relationship with Defendant, and has thereby incurred, and will continue to incur, legal fees and costs, the full nature and extent of which are presently

unknown to Plaintiff, who therefore will seek leave of Court to amend this Complaint in that regard when the same shall be fully and finally ascertained.

6.12 Plaintiff is informed and believes, and based thereon alleges, that the outrageous conduct of Defendant described above was done with fraud, oppression and malice, with a conscious disregard for his rights; and with the intent, design and purpose of injuring him. Plaintiff is further informed and believes that Asarco through its officers, managing agents, managers and/or its supervisors, authorized, condoned and/or ratified the unlawful conduct of their officers and representatives and the branch manager, including but not limited to Mr. Ray's manager, one Weldon Read, and others. By reason thereof, Plaintiff is entitled to punitive or exemplary damages from the Defendant in a sum according to proof at trial.

VII.

COUNT II

Retaliation

Plaintiff adopts paragraph 1 through 6.12 herein as though set out in full and alleges:

7.01 Plaintiff pleads further in the alternative if same be necessary, each of the allegations of this Complaint as though set out in full and for Count II alleges:

7.02 Asarco instituted a campaign of retaliation against Plaintiff which included, but was not limited to, the refusal to promote Ray, give him raises, commensurate with raises given caucasian employees for similar work, by placing Ray in unfavorable positions at work as a means of punishment, and making racial slurs toward Ray and other employees. Plaintiff was injured as a result of Asarco's conduct. Plaintiff suffered damages for which Plaintiff herein sues.

WHEREFORE, Plaintiff prays that judgment be entered in his favor and against Defendant as follows:

As to the First Cause of Action:

1. That Plaintiff be awarded general and compensatory damages, including prejudgment interest, in an amount according to proof at trial;
2. That Plaintiff be awarded punitive damages in an amount according to proof at trial;
3. That Plaintiff be awarded reasonable attorney's fees and costs of suit; and
4. That Plaintiff be awarded such other and further relief as the Court deems just and proper.

As to the Second Cause of Action:

1. That Plaintiff be awarded general and compensatory damages, including prejudgment interest, in an amount according to proof at trial;
2. That Plaintiff be awarded punitive damages in an amount according to proof at trial;
3. That Plaintiff be awarded reasonable attorney's fees and costs of suit; and
4. That Plaintiff be awarded such other and further relief as the Court deems just and proper.

WHEREFORE, Plaintiff requests that this Honorable Court order a trial at the earliest practical date, and upon such hearing:

- (1) Issue an order awarding Plaintiff back pay, front pay, compensation damages, prejudgment interest, fringe benefits, and any other appropriate relief necessary to

make Plaintiff whole and compensate him for the civil rights violations described above;

- (2) Award Plaintiff front pay, fringe benefits, and other compensation, and;
- (3) Award Plaintiff the costs of this action, including reasonable attorney's fees, and such other legal and equitable relief as this Court deems just and proper.

Respectfully submitted,

LAW OFFICES OF PHILIP R. RUSS

BY: /s/ Philip R. Russ

Philip R. Russ Bar No. 17406000

2700 S. Western, Suite 1200

Amarillo, Texas 79109

Tel. (806) 358-9293 / Fax. (806) 358-9296

JURY DEMAND

Plaintiff herewith demands a trial by jury.

EXHIBIT “A”

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **William Ray**
1209 Pecan St
Amarillo, TX 79107

From: **Dallas District Office**
207 S. Houston St.
3rd Floor
Dallas, TX 75202

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On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

450-2015-00688

Kelly P. Robinson,
Investigator

(214) 253-2868

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

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More than 180 days have passed since the filing of this charge.

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Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

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The EEOC is terminating its processing of this charge.

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The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

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The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.

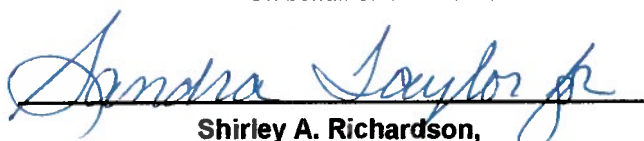
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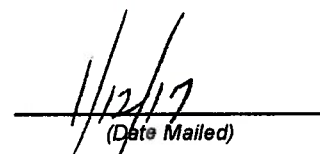
The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission


Shirley A. Richardson,
District Director


Philip R. Russ, Attorney
2700 S. Western St, Ste 1200
Amarillo, TX 79109

Enclosures(s)

cc: **Farhang & Medcoff**
Attn: Timothy M. Medcoff, Attorney
4801 East Broadway, Suite 311
Tucson, AZ 85711

re: **ASARCO/GROUPO MEXICO**

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

EXHIBIT “B”

EEOC Form 1 (1/29)

| | | | |
|---|--|---|--|
| CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small> | | Charge Presented To: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC 450-2015-00688 | |
| Texas Workforce Commission Civil Rights Division and EEOC <small>State or local Agency, if any</small> | | | |
| Name (indicate Mr., Ms., Mrs.) Mr. William Ray | | Home Phone (incl. Area Code) (806) 626-5767 | |
| Street Address 1209 Peach St, Amarillo, TX 79107 Peach St. | | City, State and ZIP Code AMARILLO, TX 79107 | |
| Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.) | | | |
| Name ASARCO/GROUPO MEXICO | | No. Employees, Members 500 or More | |
| Street Address 7001 State Highway 136, P.O. Box 30200, Amarillo, TX 79108 | | City, State and ZIP Code AMARILLO, TX 79108 | |
| Name | | No. Employees, Members | |
| Street Address | | City, State and ZIP Code | |
| DISCRIMINATION BASED ON (Check appropriate box(es).) | | DA S'D SCR MIN TION TOOK PLACE Earliest: 05-26-2014 Latest: 05-01-2015 | |
| <input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER Specify: | | <input checked="" type="checkbox"/> CONTINUING ACTION | |
| THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s).) | | | |
| I. PERSONAL HARM: I have been written up, verbally attacked, defamed and victimized by Area Supervisor Weldon Read for many years. I have complained to Human Resources and the Union with no resolution. | | | |
| II. RESPONDENT'S REASON FOR ADVERSE ACTION: No reason given. | | | |
| III. DISCRIMINATION STATEMENT: I believe that I am being discriminated against because of my Race-Black, in violation of Title VII of the Civil Rights Act of 1964, as amended. | | | |

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

10-20-15 William Ray
 Date Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

William Ray
 SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE 10-22-2015
 (month, day, year)

Liliana Cadena
 LILIANA CADENA
 NOTARY PUBLIC,
 STATE OF TEXAS



My Commission Expires **05-03-2017**